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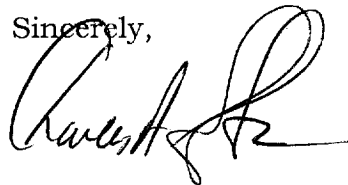
The Honorable Vernon Williams
Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No.1)
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Ex Parte No. 582 (Sub-No. 1)
Major Rail Consolidations

Dear Sir:

I am enclosing an original and twenty-five (25) copies of the Comments of the Southern California Regional Rail Authority. An additional copy is enclosed for date-stamp and return to our messenger. Please note that a copy of this filing is also enclosed on a 3.5 inch diskette in WordPerfect 5.X format.

Sincerely,



Charles A. Spitulnik

Enclosure

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

Ex Parte No. 582 (Sub-No. 1)

EX-107
Office of the Secretary

MAJOR RAIL CONSOLIDATION PROCEDURES

MAY 16 2000

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**COMMENTS OF THE
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY**

The Southern California Regional Rail Authority ("SCRRA"), by its undersigned counsel, hereby submits its Comments in response to the Order of this Board served on March 31, 2000 in this proceeding. SCRRA submits that the Board's current merger policy and procedural rules do not provide sufficient protection for the interests of that segment of the public that relies on commuter rail service as a viable transportation alternative. As a result, SCRRA proposes various changes to these rules, outlined below, to enable this Board to fulfill its statutory mandate in merger proceedings to approve transactions only when they are in the public interest.

SCRRA is a joint powers board created pursuant to Cal. Public Utilities Code §130255 and Ca. Govt. Code §6500 *et seq.* and pursuant to an agreement among the following five county transportation agencies: Los Angeles County Metropolitan Transportation Authority ("LACMTA"), Orange County Transportation Authority ("OCTA"), Riverside County Transportation Commission ("RCTC"), San Bernardino Associated Governments ("SANBAG"), and Ventura County Transportation Commission ("VCTC") (collectively, the "Member Agencies"). On behalf of the Member Agencies, it operates commuter rail service under the trade name "Metrolink" on lines owned by those Member Agencies or by Burlington Northern and Santa Fe Railway Company ("BNSF") and Union Pacific Railroad Company ("UP"). Metrolink operates

124 trains each day over six different routes totaling 416 route miles. In March 2000, it carried an average of 31,358 riders per day. In addition, Amtrak operates 33 intercity passenger trains per day over tracks owned or operated by the Member Agencies.¹

SCRRA's experience following the merger of the UP with the Southern Pacific Transportation Company ("SP")² provides a good example of the inadequacy of the protection currently available under the Board's rules. The Los Angeles Basin was one of the areas hardest hit by the service disruptions that followed that merger, and Metrolink passengers suffered frequent and prolonged delays to trains, particularly on the lines between Riverside and Los Angeles and between Ventura County and Los Angeles. In the proceedings in F. D. No. 32760, SCRRA had received specific assurances both in the Operating Plan and in responses to discovery that the merger would provide no disruption whatsoever to Metrolink operations. Experience proved otherwise. SCRRA participated actively in Ex Parte No. 573, *Rail Service in the Western United States*, explaining to the STB the scope and extent of the extreme and adverse impact on the lives of the commuters who had come to rely on Metrolink service, and seeking protection for its service from the problems that were accompanying the merging parties' attempts to integrate the two companies. SCRRA's experience demonstrates the need for enhanced regulatory protection to safeguard passengers from the adverse impacts of a merger. While the situation is much better now, Metrolink's passengers could have been spared their adverse experience if the regulations had included the additional requirements set forth below.

¹ In addition, two additional round trips (four trains altogether) run over a very short segment of track owned by LACMTA between Redondo Junction and the Los Angeles Union Passenger Terminal.

² Finance Docket No. 32760, *Union Pacific Corp., et al. – Control and Merger – Southern Pacific Rail Corp.*, Decision No. 44 (Service Date August 12, 1996).

The Boards' existing merger regulations acknowledge the existence of commuter railroads, requiring the proponents in their Operating Plan to provide detail about "any impacts anticipated on . . . [commuter services operated over the lines of applicant carriers], including delays which may be occasioned because a line is scheduled to handle increased traffic due to route consolidations." 49 C.F.R. §1180.8(a)(2).

SCRRA's experience demonstrates that the "public interest" requires more in the STB's regulations. Better information during the merger planning and application process, and specific recognition of the need for protection of the interests of commuter rail operators, would have enhanced SCRRA's ability to address the issues that arose during the difficult period following the UP-SP merger.

SCRRA proposes the following amendments to the Board's current merger policy statement and rules, set forth in 49 C.F.R. Part 1180. These changes would enhance the STB's ability to protect the interests of the members of the public who rely on commuter rail service.

1. The General Policy Statement on major rail consolidations (49 C.F.R. §1180.1) should be amended to make explicit that if a transaction threatens adverse impacts on commuter or other passenger rail service, it will be weighed as adverse to the public interest and may be remedied through the imposition of conditions on the Board's approval; and conversely that changes that reduce impediments to such service will be counted as a favorable factor in the public interest analysis. The Board clearly has the authority to impose such conditions today – the authority to approve mergers carries with it specifically the concomitant authority to impose conditions as may be necessary to ameliorate adverse impacts of proposed transactions. 49 U.S.C. §11324(c). However, by stating the potential for

conditions to protect the public interest in the reliability and safety of commuter rail operations, the Board will enhance the ability of commuter rail operators to preserve those operations following consummation of a merger transaction.

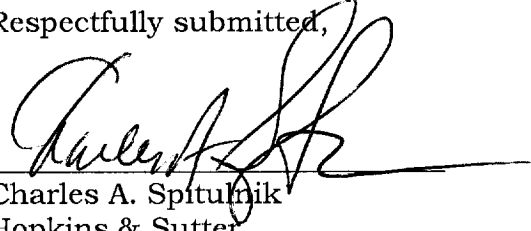
2. The procedural rules should be amended to require, prior to the submission of the application, that applicants consult with local commuter authorities to review the preliminary conclusions concerning the impacts or absence of impacts on commuter or other passenger service. This should include determining the instructions required for smooth transition of personnel responsible for understanding dispatching protocols and handling the dispatching of commuter trains when the freight railroad has control of dispatching on the line. Requiring applicant carriers to engage in this kind of dialogue before finalization of the operating plan will avoid, to the extent possible, the need for commuter authorities to intervene as adversaries once the application is filed.
3. Post-merger remedies and dispute resolution procedures, short of formal petitions to reopen, need to be established to address service problems that were not anticipated in advance of the approval or that arise notwithstanding applicants' assurances to the contrary.

CONCLUSION

SCRRA appreciates the opportunity to participate in the STB's examination of its merger policy, guidelines and procedures. SCRRA believes that adoption of the proposals set forth here will enhance the STB's ability to fulfill its mandate of protecting the public interest, and SCRRA respectfully requests the Board to

incorporate these proposals into any revision of the rules in 49 C.F.R. Part 1180 that may result from this proceeding.

Respectfully submitted,

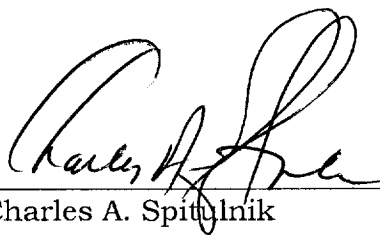
A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", written over a horizontal line.

Charles A. Spitulnik
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Washington, D.C. 20006
(202) 835-8196
Counsel for the Southern California
Regional Rail Authority

Dated: May 16, 2000

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2000, a copy of the Comments of the Southern California Regional Rail Authority was served by first class mail, postage pre-paid upon All Parties of Record.

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", is written over a horizontal line.

Charles A. Spitulnik